Supreme Court, U. S.
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IN THE

SUPREME COURT

OF THE UNITED STATES

No. 77-1631

Reston Homeowners Association, Plaintiff

vs

James L. & Janie E. Ridgill, Defendants-Appellants

JURISDICTIONAL STATEMENT IN SUPPORT OF NOTICE OF APPEAL TO THE SUPREME COURT OF VIRGINIA

James Lee Ridgill, Jr.
2516 Appaloosa Court
Reston, Virginia 22091

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IN THE
SUPREME COURT
OF THE UNITED STATES

Term, 1978

Reston Homeowners Association, Plaintiff
v
James L. & Janie E. Ridgill, Defendants-Appellants

Jurisdictional Statement in Support of Notice of Appeal to the Supreme Court of Virginia

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INTRODUCTION

Appellants pray that an appeal be granted from the denial of an appeal petition entered by the Supreme Court of Virginia on September 29, 1977 in its Record No. 77-0371 thereby affirming a judgment of the Fairfax Circuit Court in its case at Law No. 34,141, and from a denial of a rehearing on the petition denial entered by the Supreme Court of Virginia in its Record No. 77-0371 entered on November 23, 1977.

Notice of appeal under Rule 10 of the Supreme Court of the United States was ~~sent by first class mail postage prepaid on February 20, 1978.~~ FILED FEB 21, 1978

The decision of the Supreme Court of Virginia in effect, alleged no reversible error and affirmed the Constitutionality under Article 1, Section 10 of the Constitution of the United States, of Virginia State action, and of Reston Homeowners Association corporate action, in variation of the terms of the

covenants of record in the deed to appellant's lot, and the deed of dedication of Reston, Sections Two and Four, and affirmed in effect, the Constitutionality of the Seventh Amendment of the Federal Constitution, and the Constitutionality of substituting agents (by the tribunals of Virginia) named in the said deeds without the consent of the appellants or others situated like them.

Appellants submit this jurisdictional statement to show that the Supreme Court of the United States has jurisdiction of the appeal, or to grant a Writ of Certiorari, and that a substantial question is presented.

OPINIONS BELOW

The final judgment of the Fairfax Circuit Court was entered on November 22, 1976, and its opinion is printed herein on page i of the appendix. The denial of the Supreme Court of Virginia of an appeal or writ of error on apetition from appellants was entered on September 29, 1977 which is printed herein as page ii of the appendix, and a denial of rehearing was entered by the Supreme Court of Virginia on November 23, 1977, printed herein as page iii of the appendix.

JURISDICTION

The denial of a writ of error by the Supreme Court of Virginia was unsigned except for the signature of the then Deputy Clerk, Mr. Lucy, and was entered under date of September 29, 1977, and a petition for rehearing was denied in a similarly signed order dated November 23, 1977. A Notice of

Appeal under Rule 10 of the Rules of the United States Supreme Court was sent by first class mail postage prepaid on February 20, 1978.

Jurisdiction of this Court is invoked under Title 28, United States Code, para. 1257(2) and 2103 and 2104 and Parts IV and V of the Rules of This Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions are:

CONSTITUTION OF THE UNITED STATES

First Amendment
Fifth Amendment
Seventh Amendment
Fourteenth Amendment
Article 1, Section 10

CONSTITUTION OF VIRGINIA

Article VI, para. 1

CODE OF VIRGINIA

Title 8-241 (now Title 8.01-672)
Title 13.1-35
Title 13.1-45
Title 13.1, Chapter 2
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Title 16.1-92
Title 16.1-93
Title 16.1-106

QUESTIONS PRESENTED

The Constitutional questions presented by this appeal, or petition for writ of certiorari, were presented in the Fairfax County General District Court as to the primary ones concerning Article 1, Section 10, the Seventh Amendment, and procedural and substantive due process under the First, Fifth, and Fourteenth Amendments of the Constitution of the United States, and in turn to the Fairfax Circuit Court and to the Supreme Court of Virginia. These issues were argued both in the original petition and the petition for rehearing submitted to the Supreme Court of Virginia. Other issues concerning the operation of the Virginia Supreme Court, and the originally presented Constitutional issues were presented at the earliest possible instance and are:

1. Does the substitution and enforcement of a change of agents recited in deeds (the deed to appellants lot and the deed of dedication of Reston, Sections Two and Four) by operation of the charter of consolidation of Reston Homeowners Association issued by the Virginia State Corporation Commission as more fully explained in U.S. Supreme Court Case No. 71-1135 as reported at 406 US 902, 92 S. Ct. 1609, 31 L. Ed. 813 (1972) by the tribunals of Virginia in this action amount to an unconstitutional variation of said deeds under Article 1, Section 10 of the Constitution of the United States?

2. Does the inclusion against appellants consent of a portion of the $60 annual assessment enforced herein to pay for building new facilities when the charter of Reston Homeowners Association -- whether consolidated or constituent -- calls for "operation and maintenance" amount to an unconstitutional variation of the contract at issue herein under Article 1, Section 10 of the U.S. Constitution?

3. Have the tribunals of Virginia failed to accord the appellants their Constitutional rights to a proper forum in which to be heard in denial of Constitutional rights under the First, Fifth, Seventh and Fourteenth Amendments of the Constitution of the United States?

STATEMENT OF FACTS

The statement of facts as set forth in U.S. Supreme Court Case No. 71-1135 as reported at 406 US 902, 92 S. Ct. 1709, 31 L. Ed. 813 (1972) is incorporated herewith by reference.

This is an assessment enforcement proceeding under the terms of the deed to appellants lot in Reston, Virginia, and is the logical extension of the prior case as detailed above. In the prior case the State Corporation Commission took the position that it has no jurisdiction to determine the issues presented in said case which included the issue of whether a charter for a corporation issued by the State Corporation Commission such as that of Reston Homeowners Association -- whether consolidated or constituent -- passes constitutional muster when the charter is issued subject to a deed of dedication such as the Deed of Dedication of Reston, Sections Two and Four, without having the Deed of Dedication before the Commission and in the record of the charter as part of the charter papers. In Reynolds v. Alexandria Motor Bus Lines, 141 Va

213, 126 SE 201 (1925) the Supreme Court of Virginia held that the Virginia State Corporation Commission lacks the authority to grant a charter to a corporation except in a manner prescribed by law, which includes the Constitution of the United States.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

There is no longer doubt of the Supreme Court of the United States having appeal jurisdiction under Title 28 USC 1257(2) when the validity of state action has been sustained as being Constitutional, especially under circumstances as in the present situation the invalidity of State action has been injected as an issue at the earliest possible time even though the State action on its face bears no federal impediment, Dahnke-Walker Milling Co. v. Bondurant, 257 US 282; Bantam Book Co., Inc. v. Sullivan, 372 US 58, 61, n. 3 (1962). And even when a cause cannot be taken to the highest court of a state except by leave of the court itself, a refusal of the court upon proper application made to grant the leave is equivalent to a judgment of affirmance, as in the present case, and is such final judgment as may be made the basis of proceedings under the appellate jurisdiction of the Supreme Court of the United States, Gregory v. McVeigh, 90 US (23 Wall) 294, 23 L. Ed. 156 (1874). And even where the Supreme Court of Virginia has failed to enunciate its jurisdiction and found the U.S. Constitutional issues without merit, appeal may be taken to the Supreme Court of the United States, Western Union Telegraph Co. v. Hughes, 203 US 505, 27 S. Ct. 162, 51 L. Ed. 294 (1906), Sullivan et al v. Little Hunting Park et al., 396 US 229, 24

L. Ed. 386, 90 S. Ct. 400 (1969).

At first impression this case appears concerned with contractual matters within the cognizance of the tribunals of Virginia. However, as will become apparent the central issues in this case are denial of appellants rights guaranteed by the Federal Constitution of the United States. A review of the record herein reveals that appellants have not been provided with the essential guaranties of the Constitution because:

1. The tribunals of Virginia have failed at every stage of the proceedings to abide by the laws of Virginia.

2. The State of Virginia, its officers and agents, have failed to provide appellants and those situated like them with a proper forum in which to be heard.

3. The decisions of the tribunals of Virginia fail to advise appellant of the reasoning of such tribunals in such a manner that the errors in their respective decisions could be ascertained to formulate an appeal and raise proper Constitutional issues.

4. The Supreme Court of Virginia failed to provide appellants with the bare essentials of a hearing required by the First, Fifth, and Fourteenth Amendments of the Constitution of the United States by its failure to abide by its own rules, granting an oral hearing before the requisited number of judges for considering Federal Constitutional issues, and providing a written decision as appears required by law. This Court can remand for a more considered

opinion, Wisconsin v. Constantineau, 400 US 433, 438 (1970).

Under the Constitution of Virginia effective at noon July 1, 1971, and Article VI, para. 1 thereof, the Judicial Power of the Commonwealth shall be vested in a Supreme Court and in such other courts or original or appellate jurisdiction subordinate to the Supreme Court -------".

And "the Supreme Court shall by virtue of this Constitution, have appellate jurisdiction in cases involving Constitutionality of a law under this Constitution or the Constitution of the United States-----". Under paragraph 4 of the Article VI of the Virginia Constitution it has been stated that the Supreme Court of Virginia shall consist of seven justices. Pursuant to this portion of a previous Virginia Constitution it has been held that no law shall be declared unconstitutional under the Constitution of the United States except on concurrence of at least a majority of all justices of the Supreme Court. It appears then that appellants were entitled to a hearing before the full court of seven justices including an oral hearing, and were merely accorded a very brief hearing on the jurisdictional issue before three justices, none of which signed the order of the Court. These three justices proceeded to decide the case on the merits holding that there was no reversible error in effect without noting jurisdiction in the original decision on the hearing, and after notice on a petition for rehearing again failed to state the basis of their jurisdiction in denial of appellants request therefor. It is the position of appellants that when any state

action takes place in contravention of their rights they have the legal right to challenge the authority of the agents of the state and to demand that such agents set forth the basis of their authority to act in the matter and that this demand of a judicial agent of the state cannot be treated in the cavalier fashion in which the Supreme Court of Virginia acted in this case without contravening appellants rights under the Constitution of the United States. It follows then that appellants have not been accorded due process of law guaranteed them by the Constitution of the United States, Funkhouser v. Spahn, 102 Va 306, 46 SE 378 (1904). This is error of substance and is reversible error appellants contend.

On the substantive issues presented herein, the error is substantial. The construction of a writing such as the contract involved in this case (which includes the deed to appellants lot, the deed of dedication of Reston, Sections Two and Four, and the charter of Reston Homeowners Association -- whether consolidated or constituent) is a question of law for the court, Carlisle v. Hassan, 199 Va 771, 102 SE 2d 273 (1958).

In the case at issue herein, the provisions of the contract have been erroneously decided by the trial court and by the Supreme Court of Virginia on appeal. Denial of Constitutional right is reversible error, Pine v. Comm., 121 Va 812, 93 SE 652 (1917).

In Carondelet Canal Co. v. Louisiana, 233 US 362, 364 (1913) this Court stated:

"The judgment of a state court, even if it be authorized by statute, whereby private property is taken for the State, or under its direction, for public use, without compensation, is upon principle and authority wanting in due process of

law required by the Fourteenth Amendment. The same principle applies to a statute of a State. Chi., B. & Q. RR v. Chicago, 166 US 226; Fayerweather v. Rich, 195 US 276, and the Union Transit Co. v. Kentucky, 199 US 202."

"This court will determine for itself what the contract claimed to be violated was. Douglas v. Kentucky, 168 US 502; McGahey v. Virginia, 135 US 662; McCullough v. Virginia, 172 US 110; Vicksburg v. Waterworks Co., 202 US 467."

"This court will review the findings of fact by a state court where a conclusion of law as to a Federal right and the finding of fact are so intermingled as to make it necessary to analyze and dissect the facts for the purpose of passing on a Federal Question. Creswill v. Knights of Pythias, 225 US 261; Wood v. Cheseborough, 228 US 678. The necessary corollary of these propositions is that when the claim is that claimant has been deprived of property without due process of law, this Court will find for itself what the claimant's property rights were, and how he has been deprived of them."

It has been argued from the first instance possible that state action herein is repugnant to the Federal Constitution since the operative effect of the assailed state action has been the taking of property without notice and hearing or due process of law as guaranteed by the Federal Constitution, and especially Article 1, Section 10, and the First, Fifth, Seventh, and Fourteenth Amendments. The circumstances of each case determines jurisdiction of a court to give relief sought, Dodge v. Woolsey, 29 US 331, and the State of Virginia cannot enforce any part of a charter repugnant to the Constitution, Phillips Pet. v. Jenkins, 297 US 629, 634. Also,

the definition for jurisdictional purposes has been evinced to cover legislative action to which a state gives the force of law, Williams v. Bruffy, 96 US 176, 183, and covers orders of state commissions and governing bodies issued in the exercise of their delegated legislative authority, Williams v. Bruffy, supra, footnote 4, page 183.

Since the Virginia State Corporation Commission has the specific authority to issue a corporate charter, it has the authority to determine Federal Questions, especially in view of the fact that the issuance of the consolidation document which is being enforced by the Courts in this proceeding changes contractual agreements which are protected by Article 1, Section 10 of the U.S. Constitution. Also, the reserve power of a corporate charter must be determined in a consolidation document by the Commission and "these powers cannot be used to defeat the purpose for which the corporate powers were granted or to take property without compensation or arbitrarily to make alterations that are inconsistent with the scope an object of the charter or destroy or impair vested property interests." Phillips Pet. v. Jenkins, 297 US 629, 635, and this Court may determine for itself the factual issues concerning these issues, Carondelet Canal Co. v. Louisiana, supra.

Since a well reasoned decision is not available in this case, then the issues considered in the decisions must be postulated from the decisions and it must be assumed that the consolidation charter and the Virginia Code Sections under which the charter was issued have been upheld as being Constitutional because the charter is being enforced in this proceeding. It follows that this appeal is proper under 28 USC 1257 (2).

A. SUBSTITUTION OF AGENTS IS UNCONSTITUTIONAL

The deed recitals of Lot 204, Section 4, Reston, fifth paragraph, sets forth Reston Second Homeowners Association as appellants agent for enforcement of the covenants. An agent has a personal and fiduciary duty to the principal. And loyalty to that trust is the main feature of the selection, James v. Anderson, 149 Va 113, 140 SE 264 (1927). Substitution of another agent without consent of appellants is contrary to law as such substitution is unknown, American Color Type Co. v. Continental Co., 188 US 104, 107; 23 S. Ct. 265; 47 L. Ed. 404 (1902); Hofheimer v. Seaboard Citizens National Bank of Norfolk, 154 Va 392, 153 SE 656 (1930). This reasoning also applies to the Deed of Dedication of Reston, Sections Two and Four which specifically names Reston Second Homeowners Association as agent for enforcement of the covenants.

To permit this agency substitution to stand is to permit the State Corporation Commission at the request of the fiduciary directors of Reston Second Homeowners Association to do indirectly what they may not do directly, i.e., vary the terms of the deed to appellants lot and the Deed of Dedication of Reston, Sections Two and Four, and appears inconsistent with prior decisions of the Supreme Court of the United States such as that of Ridgill v. State Corporation Commission, as reported at Case No. 71-1135, 406 US 902, 92 S. Ct. 1609, 31 L. Ed 2d 813 (1972).

This agency substitution is in contravention of the Constitutional right of appellants under Article 1, Section 10 of the Constitution of the United States, and the First, Fifth, and Fourteenth Amendments as

well. This issue was argued in the trial courts, see particularly the Memorandum of Law in Support of the Motion of Summary Judgment on this issue as filed in the Fairfax Circuit Court (Appendix D hereof). This is reversible error.

B. THE CAPITAL IMPROVEMENTS IMPROPER VARIATION

Under Title 8-241 of the Code of Virginia (now Title 8.01-672) the appellants were entitled to raise and did raise an equitable defense in whole or in part to this $60 assessment.

It is the position of appellants that the contract at issue herein including the deed to their lot, the Deed of Dedication of Reston Homeowners Association whether consolidated or constituent, does not admit of any construction whereby under the terms of such contract the fiduciaries are entitled to assess the appellants for capital improvements such as a community center which is being built where none heretofore existed. If sub-agents Perce, Burgess and Kenny have been authorized to institute, compromise, and appeal this action or suit, then their admissions of the assessment being for such capital improvements is proof by appellants that this assessment is in whole or in part improper.

For example, the purposes clause of the corporate charter of Reston Homeowners Association -- whether consolidated or constituent -- reads as follows:

"(1) To operate and maintain such property as, pursuant to a Deed of Dedication -- filed August 27, 1964, in the land records of Fairfax County, Commonwealth of Virginia -- from

time to time may be designated or conveyed -- to be operated and maintained by the Corporation as parks, parking areas, open spaces, streets, paths, or as other facilities, to enforce the covenants, restrictions, reservations, servitudes, profits, licenses, conditions, agreements, easements, and liens provided in the Deed to be enforced by the Corporations, and to assess, collect and disburse the charges created under the Deed, all in the manner set forth in, and subject to the provisions of the Deed."

The appellants contend that this language of the purposes clause of the Reston Homeowners Association -- whether consolidated or constituent -- does not permit the said association to assess appellants against their consent for matters outside the terms thereof such as for capital improvements an example of which is to build a new community center where none heretofore existed. It is the position of appellants that "operation and maintenance" does not extend to creation of new facilities. Furthermore, it is the position of appellants that by the terms of the Deed of Dedication that any facility which is to be designated or conveyed for operation or maintenance will be so designated or conveyed at the time of the platting. The swimming pools south of Dulles Highway such as the Hunters Woods pool and the Glade Pool were apparently designated or conveyed for maintenance and operation after the platting and contrary to the terms of the contract.

Another portion of the allegedly stated purposes clause of the Reston Homeowners Association -- whether consolidated or constituent -- is:

"(2) To do any and all lawful things and acts that the corporation, from time to time,

in its discretion, may deem to be for the benefit of the property subject to the Deed and the owners and inhabitants thereof or advisable, proper, or convenient for the promotion of the peace, health, comfort, safety or general welfare of the owners and inhabitants thereof."

It is the position of appellants that to give any meaning to (2) supra as an object or part of the objects of the corporation would be to render such charter void for want of particularity since the charter is a contract which must be definite to have mutuality of consent and to pass Constitutional muster. Even though a contract on its face appears to have a meaning, yet if it is not possible to give it precise and definite application under the conditions intended for it to operate, it is void. A contract which has a standard of duty so vague, indefinite and uncertain that no sufficiently clear meaning can be attributed to it by men of ordinary intelligence and that they must necessarily guess at its meaning and differ as to its application transcends due process of law, Connolly v. Construction Co., 269 US 385m 46 S. Ct. 126, 70 L. Ed. 322; Yu Cong Eng v. Trinidad, 271 US 500, 46 S. Ct. 619; 70 L. Ed. 1059 (1926); Beatty v. Knowler, 29 US 151, 167 (1830).

A contract need not specify and particularize the exact norm but it must lay down a guide that has either a definite, fixed meaning at common law, or by established and recognized precedents, or a trade, technical, or definite, specific meaning, A. B. Small Co. v. American Sugar Refining Co., 267 US 233, 45 S. Ct. 295, 69 L. Ed. 589 (1925).

What then does the charter of Reston Homeowners Association -- whether consolidated or constituent -- require appellants to pay for?

Terminology of the purposes clause would appear to have a technical and legal meaning as the objects clause of a charter appears to have. Riche v. Ashbury Rwy. Carriage and Iron Co., L. R. 9 Ex 224, 225, 254, 256, 271 (1874); Beatty v. Knowler, 29 US 151, 167 (1830), and Howard L. Oleck, Non-Profit Corporations and Associations, Prentice-Hall, Englewood Cliffs, N.J., 3rd Ed., (1974), p. 206 and Chapters 8 and 9.

A formal instrument delegating authority is ordinarily subject to a strict interpretation, and the authority is not extended beyond that which is given in terms, or which is necessary to carry into effect that which is expressly given, 1 Am. & Eng. Encyclo. of Law 999.

The questions becomes what does the phrase "parks, parking areas, open spaces, streets, paths or as other facilities" mean? And taken in conjunction with the words "to operate and maintain." Appellants offer the definitions of Webster's New International Dictionary.

The word "operate" means to "act effectively or to perform some process of work" while the word "maintain" appears to mean "supply of necessaries and conveniences" or "to hold in a particular state", or "to keep possession of, not to surrender or relinquish."

The word "park" in Websters Unabridged 2d Ed. is defined as:

"2. A tract of ground kept in its natural state about or adjacent to a residence, as for the preservation of game, for walking, riding or the like."

And the 3rd Ed. of Unabridged Webster's defines "park" as:

"3. A large area often of forested land reserved from settlement and maintained in its natural state for public use (as by campers, hunters), or as a wildlife refuge."

It is not apparent that the words "parking areas" or "open spaces, streets, paths" admit of any such flexible construction as to include horse barns, swimming pools, or community centers. The general words "or other facilities" would appear to take their meaning from the prior specific words as an elementary rule of meaning of a contract. But since the language is ambiguous it appears that rules of construction must be employed.

In Rhone v. Loomis, 74 Minn. 200, 77 NW 31 (1898) the conclusions of both the majority and dissenting opinions were reached by applying the ejusdem generis canon of construction, the disagreement being as to what the factor common as to the enumerated things was. The doctrine of ejusdem generis, or what is commonly called "Lord Tenterdon's Rule" generally stated is that where a document or statute specifically enumerates several classes of persons or things, and immediately following, and classed under such enumeration, the clause embraces "other" person or things, the word "other" will generally be read "other such like" so that persons or things therein comprised may be read ejusdem generis with and not of a quality superior or different from, those specifically enumerated.

To modify a contract is to make a new one, in effect, see Russell Motor Car Co. v. United States, 261 US 514, 43 S. Ct. 428, 67 L. Ed. 778.

Thus it is the position of appellants that the Reston Homeowners Association is continually

modifying this contract without the consent of appellants which is unconstitutional under Article 1, Section 10 of the Constitution of the United States. The latest interpretation placed upon this contract by the said Association is that appellants can be assessed for the operation of the Reston Internal Bus System.

Accordingly, appellants contend that the very basis of the contract of membership in the Reston Homeowners Association -- whether consolidated or constituent -- is that its funds shall be used only for the objects set forth in the purposes clause, and that any diversion therefrom is improper and may be enjoined by any member, see Robert S. Stevens, Handbook of the Law of Private Corporations, West Publishing Co., St. Paul, Minn., 1949, page 315.

It is the position of appellants that these matters are related to ultra vires matters which appellants may raise and did raise under Title 13.1-206 of the Code of Virginia and that they are at least a partial defense to the $60 assessment in this case see Abood et al v. Detroid Board of Education, 45 US Law Week, 4473, May 23, 1977.

C. THE TRIBUNALS OF VIRGINIA FAILED TO ACCORD APPELLANTS THEIR CONSTITUTIONAL RIGHTS UNDER THE FIRST, FIFTH, SEVENTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES

The trial courts and the Supreme Court of Virginia have failed to give appellants detailed, reasoned and informative decisions which disclose the reasoning which led the tribunal to the announced

conclusion which should be viewed as minimum standards of public information. The results of this lack of information are serious. It leads to situations where those subject to the courts jurisdiction are unable to ascertain the rules to which their conduct must conform. It leads, also, to situations where even their counsel are unable to fulfill their functions effectively. Moreover, a ruling made upon grounds and for reasons clearly untenable constitutes abuse of discretion. See particularly, Frank R. Cooper, State Administrative Law (A Research Project of the American Bar Foundation and the University of Michigan Law School) the Bobbs-Merrill Co., 1965, Vol. 1, page 162.

Since a well reasoned decision is not available in this case, appellants must postulate what the courts had in mind. In the transcript, pages 41 and 42, it appears that the Judge in Fairfax Circuit Court decided the case upon principles of res judicata and collateral estoppel principles. If so, appellants contend that the decision involves reversible error. In Steinman v. Clinchfield Coal Co., 121 Va 611, 93 SE 684 (1917) the Virginia Supreme Court held that the parties and issues and facts must be the same in a tribunal having subject matter jurisdiction for res judicata and collateral estoppel to apply, and this appears consistent with the holding of the United States Supreme Court in Cromwell v. County of Sac, 94 US 351, 24 L. Ed. 195 (1876).

Since the parties and issues before a court with subject matter jurisdiction are not the same herein as compared to the case of Ridgill v. State Corporation Commission, Case No. 71-1135 as reported at 406 US 902, 92 S. Ct. 1609, 31 L. Ed. 813 (1972), res judicata and collateral estoppel do

not apply as a matter of law. Thus the only apparent basis in the record for the learned disposition of this case by the tribunals of Virginia is in error as a matter of law which are questions of law for the Court.

On appellants plea and demand for proof of authorization by authorized parties to file, prosecute, compromise, and appeal this action of suit, the tribunals have erroneously decided the issue against appellants. This plea or demand places in issue the authority of the agent such as the corporation, and the authority of the subagents thereunder.

Under Title 13.1-35 and 13.1-45 of the Virginia Code and the comparable sections of Chapter 2 of Title 13.1, the authority of an officer or agent of a corporation is what the charter, the by-laws, or the resolutions of the Board of Directors and the stockholders or members grant such officer or agent in his employment contract.

A power of attorney is an instrument in writing, 3 Am. Jur. 2d, Agency, para. 23, which must be strictly construed, 3 Am. Jur. 2d Agency, para. 29. And an agent or subagent has the duty to disclose, 3 Am. Jur. 2d, Agency, para. 200, and he must make a prompt, full and frank disclosure and account of all matters concerning the agency, and it is his duty to obey instructions, 3 Am. Jur. 2d, Agency, para. 206, and a violation of the instructions cannot be excused by custom or usage, 3 Am. Jur. 2d, Agency, para. 207.

In the case at bar, two officers of the court, i.e., Messrs. Perce and Kenny, appeared against appellant in favor of other parties while at the same time owing a fiduciary duty to appellants.

Attorneys at law and agents of corporations

are distinguished from general agents because their authority is special and limited in character, 3 Am. Jur. 2d, Agency, para. 3. No such writing appears in this case concerning the authority of subagents Perce, Burgess, and Kenny.

Since all acts of an agent outside the scope of his authority is void, Commission of Fisheries, v. Hampton Roads, O. P. & P. Assn. 109 Va 565, 64 SE 1049 (1909) the failure of these agents to prove up their authority is reversible error appellants contend.

Where the authority is created by power of attorney or other instrument in writing, the writing itself must be produced, and since the construction of writings belongs to the court and not to the jury, the fact and scope of the agency are questions of law for the court, 1 Am. & Eng. Encyclo. Law 998.

Here the fiduciaries Perce and Kenny, who were officers of the court, failed to produce the writing which they alleged gave fiduciary Burgess the authority to sue, i.e., the by-laws of Reston Homeowners Association. The only written evidence in the record showing or tending to show any authority is plaintiff-appellee exhibit no. 3, included as appendix E herein. It merely establishes that certain procedures for collection had been approved by the Board of Directors without showing that anyone was clothed with the authority to institute, compromise, or prosecute this action or suit. It is the position of appellants that this is reversible error and denial of Constitutional rights to them by the tribunals of Virginia.

In the Fairfax County General District Court and in the Fairfax Circuit Court, appellants raised equitable defenses barring the $60 assessment in whole or in part, and raised the issue of

Constitutionality of the removal, jurisdiction, and appeal statutes of the Fairfax County General District Court which code sections are Title 16.1-92; 16.1-77, and 16.1-106, respectively under the Seventh Amendment of the Constitution of the United States. The Seventh Amendment provides that in actions at common law the right of trial by jury shall be preserved, in matters over the value of $20. The appeal statute -- 16.1-106 -- provides that no appeal shall be taken from the Fairfax County General District Court unless the value is for over $50, and the judge stated that he must rule for more than $50. Appellants allege that this is unconstitutional under the Seventh Amendment of the Constitution of the United States, they having raised federally protected rights in the very first pleading they filed in this case. In support of this proposition the appellants rely on Dice v. Akron C. & Y. R. Co., 342 US 359 (1952).

Under Title 16.1-93 of the Virginia Code every action or other proceeding in a court not of record shall be tried in accordance with the principles of law and equity, and when the same shall conflict with the principles of equity, equity shall prevail.

Subagents Perce, Burgess, and Kenny had the burden of proof, see Jernigan v. Capps, 187 Va 73, 78. And they had the duty of complete disclosure and this is not an action involving a third party but a direct challenge to the authority of agents and subagents which they were bound to prove up by authority emanating from the defendants or from the Board of Directors since the directors did not appear in person. The testimony of an agent is not entitled to probative weight in the absence of written or oral evidence directly from the principle, Fisher v.

White, 94 Va 236, 242 (1897) wherein the Supreme Court of Virginia held:

"Neither are the admissions or statements of an alleged agent that he was the agent of another evidence if that agency but the fact must be proved by other evidence."

On principle, it is not apparent that the testimony of an agent that another agent has authority from a third party principal is any evidence of agency either. The other evidence must be some act of the principal. The appellants have not authorized the subagents. The next question is 'Does the approval of existing collection procedures" authorize anyone to file affidavits, appear as a witness, or otherwise institute, prosecute or compromise an action or suit?" On this issue it is the position of appellants that the burden of proof by plaintiff has not been met nor has the statutory standard of equity shall control been met.

A further example of lack of equity controlling is involved in the fact that witness Perce, an officer of Reston Homeowners Association, having a fiduciary duty to appellants which is equitable since witness Perce is secretary of said Association. Under oath in this proceeding, witness Perce said he was an employee of Gulf Reston, Inc. which member of said association appoints by its vote practically alone all of the Board of Directors of Reston Homeowners Association. Thus it is the position of appellants that from the standpoint of equity, Perce, with respect to appellants is serving two masters and is the first fiduciary in history who has served two masters, see Williams v. Bolling, 138 Va 244, 121 SE 270, 273 (1924).

Additional matters pertaining to a striking disregard of equitable matters which is present in this case is that the Supreme Court of Virginia has held that the fiduciary capacity of a corporate fiduciary does not survive a consolidation, see Hofheimer v. Seaboard Citizens National Bank of Norfolk, 154 Va 392, 153 SE 656, cert. den. 283 US 855. 51 S. Ct. 648. 75 L. Ed. 1462 (1930) which appears to be the position of the federal courts with respect to Virginia law.

Still another improper equitable feature concerning this consolidation and hence the agency substitution contrary to the terms of the deeds is that appellants are required to pay into funds used for operation and maintenance of Lake Anne and the Lake Anne Center which are located on tracts of land north of Dulles Highway which tracts are separated from Reston Sections Two and Four by several highway rights of way such as the federal highway right of way and two separate Virginia Highway rights of way -- one on either side of the federal highway right of way for Dulles Highway. Thus the Lake Anne Center and Lake Anne do not appear to touch and concern the value of the land of the lot itself of Lot 204, Section Four, Reston.

In addition to the territorial impairment of the aforesaid deeds, a different fiduciary is substituted in further impairment. For example, the Board of Directors of Reston Homeowners Association and the majority vote within the corporation are different from that of Reston Second Homeowners Association and has a different set of fiduciary duties from those of the parties to the covenants of Reston Sections Two and Four. This is further evidence of failure to abide by equitable principles in this case

which appellants contend is improper under Article 1, Section 10 of the Constitution of the United States and the Fifth and Fourteenth Amendments thereto as well.

CONCLUSION

Therefore in consideration of the foregoing, this Court should grant an appeal from the Supreme Court of Virginia, and declare in violation of the Seventh, First, Fifth and Fourteenth Amendments to the United States Constitution the action of the Virginia tribunals in the case vis-a-vis the deed to appellants lot, and that the matters as explained herein constitute a violation of Article 1, Section 10 of the Constitution of the United States with respect to the contract matters at issue in this case, and reverse or remand the final judgment of the Supreme Court of Virginia.

Respectfully submitted

James L. Ridgill, Jr.

CERTIFICATE

The undersigned certifies that he is a member of the Bar of the Supreme Court of the United States and that three copies of this Jurisdictional Statement was sent by first class mail postage prepaid on April 21, 1978 to each of the Clerk of the Supreme Court of Virginia whose address is the Supreme Court Building, Richmond, Virginia, and to the Honorable Marshall Coleman, Attorney General of Virginia whose address is the Supreme Court Building, Richmond, Virginia, and to Reston

Homeowners Association, c/o Thomas S. Kenny whose address is 11800 Sunrise Valley Drive, Reston, Virginia 22091. All the parties required to be served have been served.

James Lee Ridgill, Jr.
2516 Appaloosa Court
Reston, Virginia 22091

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

RESTON HOMEOWNERS ASSOCIATION	)	
Plaintiff	)	
vs	)	At Law No.
JAMES L. RIDGILL ET AL.	)	34,141
Defendants	)	

JUDGMENT ORDER

On the 19th day of October, 1974, came the Plaintiff, RESTON HOMEOWNERS ASSOCIATION, by its duly authorized representative and by counsel; the defendant, JAMES L. RIDGILL, JR., in person and by counsel; and the defendant, JANIE E. RIDGILL by counsel, on the issues joined, for trial by the Court without a jury.

There being no preliminary motions by either party, the Plaintiff presented its evidence to the Court and rested its case. Whereupon the Defendants moved to dismiss the action on the grounds that Plaintiff was not a proper party to bring the action, that the proper form of action should have been a bill to foreclose the lien, and that Plaintiff was not authorized to make capital improvement expenditures. This motion was argued by counsel, and was denied.

Whereupon the defendants presented their evidence to the Court and rested.

Whereupon the Defendant moved to dismiss the action on the grounds that institution of this action had not been properly authorized by the Board of Directors of the Plaintiff, and this was argued

by counsel and denied.

Upon consideration of the evidence of the parties and the argument of counsel, it appearing to the Court that judgment should be granted in favor of Plaintiff on its Motion for Judgment, and in favor of Plaintiff on Defendant's Counter-claim, it is

ORDERED AND ADJUDGED that judgment be and it hereby is entered in favor of Plaintiff against the Defendants, JAMES L. RIDGILL, JR., and JANIE E. RIDGILL, in the amount of $60.00, with interest thereon at the rate of 8% per annum from March 31, 1974, plus the Plaintiff's cost in this proceeding in the amount of $0.00.

IT IS FURTHER ORDERED that a transcript of these proceedings be incorporated as part of the record herein.

IT IS FURTHER ORDERED that the Clerk of the Court issue certified copies of this Order to counsel forthwith.

ENTER: November 22, 1976.

s/ James C. Cacheris,
Judge

SEEN:
HORWATT, KENNY, GLENNON
GOODMAN AND SCHULTZ
11800 Sunrise Valley Drive
Reston, Virginia 22091

By: s/ Thomas S. Kenny
Counsel for Plaintiff

SEEN AND ACCEPTED:
s/ John Douglas Smith
3609 Embassy Drive
Fairfax, Virginia 22030
Counsel for Defendants

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON THURSDAY THE 29TH DAY OF SEPTEMBER, 1977.

The petition of James L. Ridgill and Janie E. Ridgill for a writ of error to a judgment rendered by the Circuit Court of Fairfax County on the 22nd day of November, 1976, in a certain proceeding then therein depending, wherein Reston Homeowners Association was Plaintiff and the petitioners were defendants, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of the opinion that there is no reversible error in the judgment complained of, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said circuit court.

A Copy

Record No. 770371

Teste:
Howard G. Turner,
Clerk

By: s/ Allen L. Lucy,
Deputy Clerk

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON WEDNESDAY THE 23rd DAY OF NOVEMBER, 1977.

James L. Ridgill, et al, Plaintiffs in Error

against Record No. 770371

Reston Homeowners Association, Defendants in Error

Upon a Petition for Rehearing

On mature consideration of the petition of the plaintiffs in error to set aside the judgment rendered herein on the 29th Day of September, 1977, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:
s/ Allen L. Lucy
Clerk

BOOK 3201, page 626

21954

August 22, 1969 - et to: Simmons, Coleburn, Towner & Carman

THIS DEED, Made this 24th day of July, 1969, by and between MAURY L., INC., a Delaware Corporation, party of the first part, and JAMES L. RIDGILL and JANIE E. RIDGILL, his wife, parties of the second part.

WITNESSETH: That for and in consideration of the sum of Five Dollars ($5.00), receipt whereof is acknowledged, the party of the first part does hereby grant, bargain, sell and convey unto the parties of the second part, as tenants by the entirety, with the full common law right of survivorship, it being intended that the part of the one dying first shall then belong to the survivor, with general warranty of title, all that certain lot or parcel of land, together with the improvements thereon, located in Fairfax County, Virginia, more particularly described as:

All of Lot 204, Section 4, RESTON, as shown on a plat attached to a deed of Vacation and Rededication recorded among the land records of said County in Deed Book 3033, at page 502, as corrected and re-recorded in Deed Book 3162, at page 686, among the land records of said County, being a re-subdivision of Parcels 1 and 3, Section 4, and Parcel 3-B, Section 2, RESTON, as originally dedicated, platted,

and recorded among the land records of said County in Deed Book 2630, at page 465.

And being part of the same property conveyed to the party of the first part by Deed recorded among the land records of said County in Deed Book 3082, page 465.

Together with a membership in the Reston Second Homeowners Association, which Corporation shall be charged with the duty of enforcing the protective covenants and restrictions contained in the Deed of Dedication recorded as aforesaid, as agent of the grantee herein and other lot owners in said subdivision, and which membership shall run with the land and automatically pass to subsequent owners of the lot herein conveyed whether referred to specifically or not.

The parties of the second part by accepting this conveyance, covenant and agree to abide by the protective covenants, restrictions and charges contained in the Deed of Dedication of Reston, Section 2, recorded in Deed Book 2499, at page 339, amended in Deed Book 2761, at page 415, and incorporated by reference in the Deed of Dedication of Reston, Section 4, as recorded in Deed Book 2630, at page 84, and in the Deed of Rededication recorded in Deed Book 3033, at page 502, and on the plats recorded with said Deeds of Dedication; take subject to said charges and liens for unpaid charges and agree that in any conveyance of the above described property, they will require the grantees to covenant to abide by such protective covenants, restrictions and charges.

This conveyance is made subject to conditions, restrictions, reservations, rights of way and

easements contained in the Deeds forming the chain of title to this property,

The party of the first part covenants that it has the right to convey said land; that it has done no act to encumber the same; that the parties of the second part shall have quiet possession thereof free from all encumbrances; and that the party of the first part will execute such further assurance of said land as may be requisite.

IN WITNESS WHEREOF, MAURY L., INC., has caused this Deed to be executed by its President, and its seal affixed and attested by its Secretary pursuant to due authority granted by said Corporation.

L.S. MAURY L., INC.

By s/ Maurice Lipnick
President

ATESTE: s/ Marilyn C. Lipnick
Secretary

STATE OF VIRGINIA AT LARGE) To-Wit:

I, ERNEST W. PROCTOR, a Notary Public in and for the State of Virginia at Large, whose commission expires February 1, 1970, do hereby certify the MAURICE LIPNICK, President of MAURY L., INC., whose name is assigned to the foregoing and attached Deed, dated July 24, 1969, has acknowledged the same before me in my State as aforesaid as the act and deed of said Corporation and made oath before me that the said Deed is signed and acknowledged by due authority.

GIVEN under my hand this 25th day of July, 1969.

s/ Ernest W. Proctor
Notary Public

State Tax $63.00
County Tax $31.00
Tax $42.00

In the Clerk's Office of the Circuit Court of Fairfax County, Virginia July 31, 1969 at 10:00 AM. This instrument was received and, with the certificate annexed, admitted to record.
TESTE:
s/ W. Franklin Gooding
Clerk

BOOD 2761, page 415

12582

May 20, 1966 - Ret to: Bauknight, Prichard, McCandlish and Williams, Attys.

THIS AMENDMENT TO DEED OF DEDICATION, made and entered into this 15th day of April, 1964, by RESTON, VA., INC., (formerly Palindrome Corporation), a New York Corporation, hereinafter sometimes referred to as "Reston", party of the first part, and RESTON SECOND HOMEOWNERS ASSOCIATION, a Virginia non-stock corporation, hereinafter sometimes referred to as the "Association", party of the second part;

WHEREAS, by Deed of Dedication dated August 27, 1964, in Deed Book 2499 at page 339 among the land records of Fairfax County, Virginia, Reston subdivided a portion of its land more particularly described therein into lots and streets and open spaces, and designated and dedicated the same as RESTON, SECTION TWO: AND WHEREAS, by joining in said Deed of Dedication, the Association accepted the responsibilities and duties imposed upon it by the protective covenants and restrictions set forth therein and to which the entire area shown on the plat attached ----------

IN THE COMMONWEALTH OF VIRGINIA

IN THE CIRCUIT COURT OF FAIR FAX COUNTY, VA.

RESTON HOMEOWNERS ASSOCIATION, INC.)
Plaintiff)
vs)
JAMES L. AND JANIE E. RIDGILL)
Defendants)

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

It appears well settled law in Virginia that an agent may not vary the terms of a contract without the consent of the principal, see Neilson v. Bowman, 70 Va 732, 737-739 (1876). Thus it appears that the Deed to defendants lot as recorded in Deed Book 3201 at page 626 of the land records of Fairfax County, Virginia, may not be varied by anyone without defendants consent. By the terms of said deed, defendants appointed Reston Second Homeowners Association their agent for enforcement of the covenants listed in the deed, which covenants are those of Reston, Sections Two and Four, to which defendants are parties. Defendants contend that an agent may not substitute another agent without the consent of the principal, see Barber Agency v. Co-operative Barrel Co., 133 Minn 207, 158 NW 38 (1916) wherein the court said:

"---to permit ---an agent, to transfer his duties and powers to a corporation without the consent of the principal would involve a more radical violation of the rules governing the relation of

principal and agent than to permit a partnership, employed as an agent, to devolve its powers and duties upon one of its members. Barber could no more substitute plaintiff for himself as defendants agent, without defendants consent, than he could so substitute any other corporation or individual ---"

Accordingly, it appears Reston Second Homeowners Association cannot substitute another corporation as agents for defendants without defendants consent. The Board of Directors of another corporation would be elected by a different voting majority having different fiduciary duties toward defendants. Thus said Board would have different fiduciary duties towards defendants.

Different fiduciary duties would appear to be in conflict with those owed to defendant, and to the benefit of plaintiff, since it is of no benefit to defendants. When a fiduciary relationship is found to exist, any transaction such as the consolidation of Reston Second Homeowners Association into Reston Homeowners Association to the benefit of the dominant party is presumptively fraudulent, see Nicholson v. Shockey, 192 Va 270, 64 SE 2d 813 (1951). And no agent may perpetuate a fraud upon a principal in Virginia, See Bankers Fire Ins. Co. vs. Sands, 168 Va 545m k 92 SE 617, 621 (1937). In such matters even if true that defendants have suffered no injury, the law makes no such inquiry, see Williams v. Bolling, 138 Va 244, 121 SE 270 (1923).

Under Title 13.1, Section 245 (b) of the Code of Virginia, which appears to have applied to Reston Second Homeowners Association, the issuance of

the order of consolidation into Reston Homeowners Association terminated the existence of Reston Second Homeowners Association. The termination of an artificial being which is an agent terminates the agency, see Mechem on Agency, Callaghan and Co., Chicago, 1914, Vol. 1, para. 674, wherein the author states:

"Where, instead of a natural person, an artificial person is constituted the agent, as in the case of a corporation, the legal 'death' or dissolution of that artificial person, would ordinarily terminate the agency."

The case law in support of this proposition includes such cases as Larson v. Newman, 19 N.D. 153, 121 NW 202 (1909); Egner v. States Realty Co., 223 Minn 305, 26 NW 464 (1947).

Since the "being invisible, intangible, and existing only in contemplation of the law" which defendants designated as their agent for assessing, collecting, and disbursing, etc. no longer exists -- Reston Second Homeowners Association -- defendants contend that no party such as plaintiff, nor any successor plaintiff, may substitute another legal entity such as Reston Homeowners Association for defendants agent without defendants consent. And this would appear to be true for all parties to the covenants of Reston, Sections Two and Four, since the parties did not consent to any agency subsitution, see Fairfax Chancery Case No. 31,217 wherein the parties did not consent.

In Jernigan v. Capps, 187 Va 73, 78 (1948) the Supreme Court of Virginia said:

"---while courts of equity will enforce restrictive covenants where the intention of

the parties is clear and the restrictions are reasonable, they are not favored, and the burden is on him who would enforce such covenants to establish that the activity objected to is within their terms. They are to be most strictly construed against the grantor and persons seeking to enforce them, and substantial doubt or ambiguity is to be resolved in favor of free use of property and against restrictions.---"

Thus it appears that defendants are entitled to judgment as a matter of law because no fact matters are in issue.

Wherefore defendants pray for summary judgment, return of all funds paid to Reston Homeowners Association since April 22, 1970, interests, costs by defendants expended and reasonable attorneys fees.

Respectfully submitted,

s/ John Douglas Smith
Attorney for Defendants
3609 Embassy Lane
Fairfax, Virginia 22030

Date 10-19-76

Judge JCC

MINUTES OF
SPECIAL MEETING OF THE BOARD OF DIRECTORS
RESTON HOMEOWNERS ASSOCIATION

Held December 19, 1973

A special meeting of the Board of Directors of Reston Homeowners Association was held at 8:30 p.m. on December 19, 1973 in Lake Anne Hall, Reston, Virginia. Present were Messrs. Stenberg, Ewald, Magness, Steinbaues, Todd, Cox, and Saunders. Absent were Messrs. Morse and Burch. Also present was Thomas Burgess, Executive Director of the Association.

The minutes of the special meeting of July 25, 1973 were read and approved as corrected.

The Board next considered the proposed operating and capital budget for 1974. The President remarked that it represented two months work by the Association staff and the RHOA Council and recommended its adoption. The Executive Director noted that the document serves both as a financial control and an expression of the long and short term goals of the Association. Mr. Ewald, seconded by Mr. Cox, moved the adoption of the following resolution:

RESOLVED, that the 1974 budget of $920,530 be approved as presented ----
--------.

Mr. Ewald, seconded by Mr. Steinbauer, moved the adoption of the following resolution:

RESOLVED, that the annual charge called for by Article II, Paragraph 8 of the Deed of Dedication be fixed for the year 1974 at $60.00, or 1% of assessed valuation whichever is the lesser.

The Executive Director inquired if existing collection procedures were to stand. It was the sense of the Board that they were. The resolution was unanimously adopted.

---

s/ ROBERT PERCE
Secretary

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VA.

RESTON HOMEOWNERS ASSOCIATION	)	
Plaintiff	)	AT LAW
vs	)	34,141
JAMES L. AND JANIE E. RIDGILL	)	
Defendants	)	

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

COME NOW defendants in the above entitled and numbered cause and file this their notice of appeal and assignments of error pursuant to Rule 5:6 of the Rules of Practice of the Supreme Court of Virginia. And in support thereof state that the transcript has been filed in this case, and further set forth errors of the said Court as follows:

The Honorable Circuit Court of Fairfax County, Virginia in its final order, judgment and decree entered in the above entitled and numbered cause on November 22, 1976, signed by the Honorable James C. Cacheris erred:

1. In denying defendants motions for summary judgment and dismissal at trial on the agency question in that defendants have not appointed Reston Homeowners Association their agent and the denial of these motions is contrary to the law and evidence in this case.

2. In denying defendants motion to dismiss on grounds that Mr. Burgess failed to show that he was authorized to institute the action or suit as

agent within the terms of the deed to defendants lot which denial is contrary to the pleadings, the law, and the evidence in this case.

3. In rendering judgment against defendants for the $60 assessment in that the record shows that Reston Homeowners Association has levied against them for matters not within the terms of the contract as evinced in the deed to their lot as recorded in Deed Book 3201 at page 626 of the land records of Fairfax County, Virginia, the deed to the common lands as recorded in Deed Book 2761 beginning at page 415 of the land records of Fairfax County, Virginia, and the corporate franchise issued to Reston Homeowners Association -- consolidated or constituent.

4. In the affirmative covenants such as payment of a $60 annual assessment in this action at law are not enforceable in Virginia.

5. In that affirmative covenants such as the payment of the $60 assessment in this action at law are not enforceable as a personal liability in that defendants have no personal contract with Reston Homeowners Association -- consolidated or constituent.

6. The records of Reston Homeowners Association such as its charter, by-laws, minutes of its meetings -- whether Director's or Members'-- are not recorded within the chain of title of Lot 204, Section 4, Reston, recorded as aforesaid.

7. In that the enforcement of this $60 assessment is an unconstitutional variation of the deed to Lot 204, Section 4, Reston, recorded as aforesaid, under Article 1, Section 10 of the United States Constitution.

8. In that the jurisdictional and removal statutes under which the Fairfax County General District Court operates are unconstitutional under the Seventh Amendment of the Constitution of the United States.

9. In that Reston Homeowners Association is no more than a third party beneficiary and cannot enforce any contracts on defendants other than those set forth by defendants in the chain of Title of Lot 204, Section 4, Reston.

10. In that reasonable standards for ascertaining how said assessments are to be determined, apportioned, or spent are not set forth and are therefore void as being unconstitutional and indefinite.

11. In the Reston Homeowners Association is not a party to the covenants as set forth in the Deeds at issue in this case and the corporate franchise was issued subject to the said Deeds.

12. In that the factual and legal basis for the final order and the interlocutory orders entered in this case are not set forth in said orders thus failing to provide a rational and legal basis for said orders as appears mandated by the Constitution of the United States and which appears to amount to denial of equal protection and due process as well as abuse of discretion by the Court.

13. In denial of defendants motion for dismissal on grounds that the contract at issue does not provide a basis for assessment for capital improvements such as a community center.

Respectfully submitted,

s/ John Douglas Smith
Attorney for Plaintiffs
3609 Embassy Lane
Fairfax, Virginia 22030

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing notice of appeal and assignments of error were sent on December 17, 1976, by first class mail postage prepaid to Reston Homeowners Association, c/o Thomas S. Kenny, 11800 Sunrise Valley Drive, Reston, Virginia 22091.

s/ John Douglas Smith

FILED FEB 21, 1978

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

In re: Reston Homeowners Association	)	Record No. 770371
vs	)	
James L. and Janie E. Ridgill	)	

COME NOW the defendants in the above styled case and file this their notice of appeal to the Supreme Court of the United States under Rule 10 of the Rules of the Supreme Court of the United States, and that the said defendants are the parties taking this appeal.

This appeal is taken from the entry of order of the Supreme Court of Virginia in its Record No. 770371 entered September 29, 1977, and from the entry of order by the Supreme Court of Virginia in its Record No. 770371 entered petition for a rehearing thereon, which affirmed in effect the judgment of the Fairfax Circuit Court entered in its Case At Law No. 34,141 under date of November 26, 1976.

This appeal is taken under Title 28, United States Code, Section 1257 (2) and Title 28 United States Code, Sections 2103 and 2104 and under Parts IV and V of the Rules of the Supreme Court of the United States.

s/ James L. Ridgill, Jr. 2/20/78
s/ Janie E. Ridgill

CERTIFICATE OF
SERVICE

I certify that I am a member of the Bar of the Supreme Court of the United States and that a copy of the foregoing notice of appeal was sent by first class mail postage prepaid on February 20, 1978, to each of the following which are the parties required to be served and all of them to the best of my knowledge and belief:

1. Reston Homeowners Association, c/o Thomas S. Kenny, 11800 Sunrise Valley Drive, Reston, Virginia 22091
2. Clerk, Supreme Court of Virginia, Supreme Court Building, Richmond, Virginia
3. The Honorable Mr. Coleman, Attorney General of Virginia, Supreme Court Building, Richmond, Virginia
4. The Honorable John Dalton, Governor of Virginia, the Capitol Building, Richmond, Virginia.

s/ James Lee Ridgill, Jr.
2/20/78

Supreme Court, U. S.
FILED
JUN 15 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1977

No. 77-1631

RESTON HOME OWNERS ASSOCIATION,
Plaintiff-Appellee

V.

JAMES L. RIDGILL AND JANIE E. RIDGILL
Defendants-Appellants

MOTION TO DISMISS APPEAL

Michael S. Horwatt
HORWATT, KENNY, GLENNON,
GOODMAN & SCHULTZ
11800 Sunrise Valley Drive
Reston, Virginia 22091
Counsel for Appellee

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1977

No. 77-1631

RESTON HOME OWNERS ASSOCIATION,
Plaintiff-Appellee

V.

JAMES L. RIDGILL AND JANIE E. RIDGILL
Defendants-Appellants

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF VIRGINIA

MOTION TO DISMISS APPEAL

Pursuant to Rule 16 of the Supreme Court of the United States, appellee moves the Court to dismiss the appeal in this cause on the grounds hereinafter set forth.

STATEMENT OF THE CASE

Appellee is a non-stock, non-profit membership corporation which maintains and operates common areas and recreational facilities in Reston, Virginia. By virtue of certain covenants running with the land, all

persons owning residential property in Reston are automatically members of the association and are assessed an annual charge to support its operations. Appellants own such property, and accordingly are members of appellee association.

This case originated in the County Court (Civil Division) of Fairfax County, Virginia, when appellee sued the appellants for $72, representing an unpaid annual membership assessment for the year 1974. The amount sued for was reduced prior to trial, to $60. After two pre-trial hearings and a trial on the merits, the County Court awarded judgment in favor of appellee association.

On appeal to the Circuit Court of Fairfax County, a trial de novo was held and judgment again entered in favor of appellee. Appellants waived trial by jury in the Circuit Court.

Appellants' petition for a writ of appeal to the Virginia Supreme Court was denied, and a petition for rehearing by that Court was similarly denied. See pp. 1 and 2 of appellants' jurisdictional statement.

Appellants contend that various federal questions of a substantial nature are involved in this appeal. As appellee understands them, the questions presented deal with

- whether the consolidation of two predecessor associations into the appellee Reston Home Owners Association was proper;

- whether appellee was and is acting within or without the scope of its corporate powers in making certain capital improvements to some of its properties;
- whether the civil judicial procedures of Virginia violated appellants' constitutional rights.

It is appellee's contention that none of the questions raised by appellants constitutes a substantial federal question and that the judgment appealed from rests on an adequate non-federal basis.

GROUNDS FOR MOTION TO DISMISS

I. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED.

The questions presented by appellants, as set out in their jurisdictional statement, do not present any substantial federal question. The first question raised deals with the propriety of the consolidation, under applicable Virginia law, of two predecessor homeowner associations into the present appellee, Reston Home Owners Association. This precise question has previously been raised before this court by one of these appellants, but contrary to the implication on page 12 of appellants' jurisdictional statement, this court refused to hear the appeal. Ridgill v. Gulf Reston, Inc., 406 U.S. 902 (1972).

The second question raised on appeal is whether certain acts of appellee have been ultra vires. The construction of a corporate charter and a deed would seem to be questions uniquely within the province of the state courts, and do not present substantial federal questions.

Finally, appellants raise constitutional challenges to various aspects of Virginia civil judicial procedure. The most fundamental seems to be that the Fairfax County Court, being a court not of record, has no jury trials, and hence appellants contend that their seventh amendment right to trial by jury has been violated. However, appellants were entitled as a matter of right to a non-discretionary appeal to a court of record, the Fairfax Circuit Court, where a jury trial is available and all appeals from County Court are heard in the form of a trial de novo. Curiously, appellants waived jury trial and elected trial by the court. It is submitted that this constitutes a waiver of appellants' complaint about the lack of a jury trial.

The other challenges raised by appellants to Virginia civil procedure in this case do not appear to rise to the level of constitutional issues. They attack matters of proof——for example, authorization by appellee's board of directors to institute this collection suit——and consideration by the court of various equitable defenses raised by appellants. There simply is

no federal question here, much less a constitutional issue.

An appeal will be dismissed by this court when resolution of the issues raised is not appropriate to the circumstances of the case. DeBacker v. Brainard, 369 U.S. 28 (1969). This court has consistently held that the existence of a real, not fictitious or frivolous, Federal question is essential to this court's jurisdiction to review state court judgments. See, e.g., Caldwell v. Texas, 137 U.S. 692 (1891); Equitable Life Assur. Soc. v. Brown, 187 U.S. 308 (1902); Delmar Jockey Club v. Missouri, 210 U.S. 324 (1908).

II. THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS

As noted earlier, this case is one for collection of a $60 membership assessment imposed by the Reston covenants. The trier of fact in this case has determined that appellee proved the elements of its case and awarded judgment thereon. Basically, the elements of proof involved are that a contractual obligation to pay certain monies existed and that appellants had not met this contractual obligation.

Construction of the contract and determination of the facts of the matter are well within the province of the state courts. No federal question had to be addressed in order to pass on the merits of appellee's claim or appellants' defense. The judgment appealed

from clearly rests on an adequate non-federal basis.

III. THE APPEAL DOES NOT DRAW IN QUESTION THE VALIDITY OF A STATE STATUTE AS REPUGNANT TO THE CONSTITUTION.

Under 28 U.S.C. § 1257 (2), a final judgment of the highest court of a state may be reviewed on appeal to the Supreme Court where the validity of a statute of any state is questioned on the grounds of its being repugnant to the Constitution. But the challenge to such a statute must have been distinct and substantial, House v. Road Improvement Dist., 266 U.S. 175 (1924), and actually decided, Ireland v. Woods, 246 U.S. 323 (1918).

In this case, appellants raise on appeal the same unelaborated challenge raised below to the "jurisdictional, removal and appeal" statutes dealing with the Virginia County Court system. Appellants have never explained why they object to these statutes other than the bald assertion that they violate the Seventh Amendment. However, it appears that every objection they could conceivably have is overcome by their guaranteed appeal to a court of record, with trial de novo. On that appeal, appelants waived jury trial.

Nevertheless, appellants continue to claim some sort of abridgement of their rights by reason of these procedural statutes which bear absolutely no relation to the merits of this case. Such unsubstantiated claims

should not serve as a basis for asserting federal jurisdiction under Section 1257 (2).

For all of the foregoing reasons, the appeal herein should be dismissed.

Respectfully submitted,

Michael S. Horwatt
HORWATT, KENNY, GLENNON
GOODMAN & SCHULTZ
11800 Sunrise Valley Drive
Reston, Virginia 22091
Counsel for Appellee

Supreme Court, U. S.
FILED
OCT 26 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1978

No. 77-1631

RESTON HOMEOWNERS ASSOCIATION,
Plaintiff-Appellee

v

JAMES L. RIDGILL AND JANIE E. RIDGILL
Defendants-Appellants

REHEARING UNDER RULE 58 OF THE ENTRY OF ORDER OF THE COURT ENTERED ON OCTOBER 2, 1978, DENYING JURISDICTION

James L. Ridgill
2516 Appaloosa Court
Reston, Virginia 22091

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APPENDIX 4: Order of Judge Cacheris in Fairfax County Circuit Limiting the issues to be tried herein

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IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1978

No. 77-1631

RESTON HOMEOWNERS ASSOCIATION,
Plaintiff-Appellee

v

JAMES L. AND JANIE E. RIDGILL,
Defendants-Appellants

ON APPEAL FROM THE SUPREME COURT
OF VIRGINIA

MOTION FOR REHEARING UNDER RULE 58 OF THE ENTRY OF ORDER OF THE COURT ENTERED ON OCTOBER 2, 1978, DENYING JURISDICTION

Pursuant to Rule 58 of the Supreme Court of the United States, appellants move the Court for rehearing from the entry of order of October 2, 1978, entered herein on the grounds hereinafter set forth.

STATEMENT OF THE CASE

Appellants own Lot 204, Section 4, Reston Virginia as set forth in the deed

thereto as evinced in Appendix B of the Jurisdictional Statement filed in this cause in the Supreme Court of the United States on April 21, 1978. This deed recites that appellants are members of a non-profit membership corporation known as Reston Second Homeowners Association whose charter was issued subject to the Deed of Dedication of Reston Sections Two and Four as set forth in Appendix C of the Jurisdictional Statement filed in this case on April 21, 1978. Both of the aforesaid deeds set forth that Reston Second Homeowners Association is the agent for enforcement of the covenants running with the land embodied in said deeds.

The Deed to appellants lot was recorded on July 25, 1969 as set forth in Appendix B of the Jurisdictional Statement filed in this cause in the Supreme Court of the United States on April 21, 1978. The Deed of Dedication of Reston Sections Two and Four was filed and recorded in Fairfax County, Virginia in May of 1966 as set forth in Appendix C of the Jurisdictional Statement filed in this cause in the Supreme Court of the United States on April 21, 1978.

In 1970, the then corporate mem-

ber of Reston Second Homeowners Association ---Gulf Reston, Inc.--- a stock corporation having voting control of the membership corporation of Reston Second Homeowners Association voted to and filed articles of consolidation for consolidating Reston First and Second Homeowners Associations into Reston Homeowners Association over defendants timely objections in violation of fiduciary duties to appellants appellants contend as set forth in appellants prior case in the Supreme Court of the United States in reference to this matter as recorded in U. S. Supreme Court Case 71-1135, 406 US 902, 92 S. Ct. 1609, 31 L. Ed. 813, (1972).

In this prior case, the State Corporation Commission of Virginia appears to have held it had no jurisdiction of Deeds which was in effect affirmed by the Supreme Court of Virginia. The Supreme Court of the United States in denying the appeal and writ of certiorari as at 406 US 902 in operative effect appears to have affirmed this position of the Virginia tribunals.

Defendants paid all assessments for 1970 thru 1973 under protest notify-

ing Gulf Reston thru its officers and agents on the Board of Directors of the Reston Homeowners Association that defendants considered the operation of the said Association to be outside the terms of the agency and contractual limitations of the deed to their lot and demanded that said officers and agents conduct the affairs of the Association within the terms of the contract strictly construed.

It appearing to defendants that the officers and agents as aforesaid were going to operate the said Association without regard to appellants instruction of their corporate agent, appellants have refused to pay any assessment pending litigation of the issues raised by them.

This case originated in the civil division of Fairfax County General District Court, a court not of record, by civil warrant and affidavit signed by the esteemed partner of Counsel of Record Horwatt--- a member of the Virginia Bar, one the esteemed Thomas S. Kenny stating under oath that he was agent of Reston Homeowners Association and that he was attorney and agent ofthe association familiar as such with the books of account and that an assessment of $60 and a late

charge of $12 had been duly fixed by the Board of Directors and was due and owing filed January 24, 1975, in the General District Court, see appendix 3 hereof.

A continuance was granted in the Civil Action 75-0803 which was assigned this case in Fairfax County General District Court. On March 3, 1975 defendants filed a motion forremoval of this case to the Fairfax County Circuit Court, filed an answer under oath and a counterclaim under oath. On or about March 4, 1975 alleged agent of the plaintiff corporation---Reston Homeowners Association---one the esteemed counsel in the Virginia tribunals, Mr. Kenny, filed an opposition to removal, a motion to strike the answer, a plea in abatement, a demurrer, a plea in bar, and a motion to dismiss the counterclaim. On or about March 7, 1975 appellants filed a motion to strike the affidavit, a motion to strike the demurrer to the counterclaim, an opposition to the plea in bar, a motion to strike appellee's motion to dismiss the counterclaim, and a motion to strike appell ee's plea in abatement to the counterclaim. These motions were heard on March 13, 1975. Counsel for defen-

dants, Mr. William R. Trenor, died on April 24, 1975. On May 22, 1975, Judge Robert C. Watson of the Fairfax County General District Court entered an order stating what issues would be tried and set May 29, 1975 for trial on the merits.

The case was heard on the merits by the Honorable Judge Morris of Fairfax County General District Court who ruled against appellants, who then perfected an appeal to the Fairfax County Circuit Court on June 5, 1975 with the appeal being dated June 11, 1975. Appellants served notice of intent to docket the case in the Circuit Court on March 4, 1976. The appellees under Date of July 6, 1976, allegedly served notice upon appellees and the Circuit Court issued an order thereon dated July 21, 1976. On August 4, 1976, a pre-trial hearing was held. On August 23, 1976 the Honorable James C. Cacheris entered an order limiting the issues to be tried. The case was tried on those issues, see appendix 4 hereof. The final order was rendered on November 22, 1976 and appellants filed notice of appeal and assignments of error on December 20, 1976. Appellants perfected an appeal to the Supreme Court of Vir-

inia re judgment order of Fairfax County Circuit Court entered November 22, 1976 by filing Notice of Appeal and Assignments of Error in the Fairfax County Circuit Court on December 20, 1976, and by the subsequent filing of a Petition for an Appeal in the Supreme Court of Virginia on March 21, 1977. The Virginia Supreme Court entered judgment against defendants on September 29, 1977 and denied a petition for rehearing on November 23, 1977. Defendants filed a Notice of Appeal under Rule 10 of the United States Supreme Court in the Supreme Court of Virginia and on Reston Homeowners Association on February 21, 1978. On April 21, 1978 appellants filed a printed brief and a petition for extension of time up to April 22, 1978 for docketing the brief (jurisidictional statement) citing Johnson v. Florida, 391 US 596,598 n wherein a 56 day extension was granted stating that the matter was not jurisdictional. The Court personnel held that the printed jurisdictional statement did not comply with the rules of the court as to size of the print or size of the paper. Forty copies of a printed jurisdictional statement complying with

the rules of the Court were accepted by the Court personnel and the case was docketed on May 16, 1978. Within the time allowed by the Rules of Court, Attorney Horwatt filed a Motion to Dismiss the appeal. On October 2, 1978, the Supreme Court of the United States entered an order denying jurisdiction and denying a writ of certiorari. Defendants-appellants present this motion for reconsideration or rehearing from that entry of order under Supreme Court Rule 58. It is the position of appellants that the Supreme Court of the United States has jurisdiction to hear this case for the reasons as hereinafter set forth.

THE PETITION OF APRIL 21, 1978 CITING JOHNSON v. FLORIDA, 391 US 596, 598 n

Under Rule 39 (4) of the Supreme Court of the United States, second sentence "If papers are filed in a form which is not clearly legible, the Clerk will require that new copies be substituted, but the filing shall not thereby be deemed untimely". Accordingly, since the papers or printed jurisdictional statement of April 21, 1978 filed by appellants were within the time limit of Johnson v. Florida, 391 US 596, 598 n of 60 days as

discretionary with the Court, appellants assumed that the docketing of the case was a granting of the petition thereunder. If not, appellants pray that the petition be granted since it does not appear to be jurisdictional. To do otherwise, defendants respectfuly contend, would be to exalt form over substance on jurisdictional and substantive legal questions.

Moreover, since the Court did not delineate specific reasons why it had no jurisdiction in its order in this case entered on October 2, 1978, appellants will now demonstrate jurisdiction in the Court below in the event that the issue of Rule 39 (4) and the Petition of April 21, 1978 under Johnson v. Florida is decided in appellants favor. See appendix 1.

JURISDICTION OF THE VIRGINIA SUPREME COURT

Under Article VI, para. 1 of the Virginia Constitution
the Virginia Supreme Court has appellate jurisdiction of Constitutional issues raised in the trial court. Appellant raised such issues in the trial court as more fully explained in the jurisdictional statement filed in this case in the Supreme Court of the United States on April 21, 1978. The issues presented in the

tribunals of Virginia under the Constitution of the United States have been adversely decided by those tribunals in violation of defendant-appellants rights under the Constitution of the United States and the Supreme Court of the United States has jurisdiction under Title 28 United States Code, Section 1257 (2) and para. 2103 and 2104 and parts IV and V of the Rules of this court.

The Virginia Supreme Court also had statutory jurisdiction of this appeal under Title 8, Section 464 of the Code of Virginia (now Title 8.01, Section 672 of the Code of Virginia set forth in the appendix 2 to this motion) under the corporate franchise issue, a title to realty question, and matters not merely pecuniary question in the substitution of agents in the rewriting of the deed to appellants lot as set forth in the appendix submitted in the original jurisdictional statement presented in the Supreme Court of the United States.

The Virginia Supreme Court was specifically asked to clearly delineate state law on the point but failed to do so. The Supreme Court of the United States has the authority to determine

questions of jurisdictional fact, see Crowell v. Benson, 285 US 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932), particularly where as here federal constitutional rights are in issue, since it is a question of appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions such as under Article I, Section 10 of the Constitution of the United States.

In the Motion to Dismiss the appeal filed by Attorney Horwatt in this case he has alleged that no federal question is presented of a substantial nature and that the judgment rests on an adequate non-federal basis. It is the position of appellants that the deed to their lot sets forth that the relationship between appellants and appellees is contractual of a special nature, i. e. one of agency (see the fifth paragraph of the deed to appellant's lot). This agent (Reston Homeowners Association--- whether consolidated or constituent) has obtained state action in violation of their fiduciary duty to appellants which is unconstitutional under the Constitution of the United States. The questions presented are substantial and certainly

not frivolous. Appellant can be required to pay up to $800 per year in assessments under the terms of this corporate set up issued subject to a deed of dedication, which involves incorporation by reference documents not before the State Corporation Commission in the charter thus vitiating constitutional notice of what defendants and those situated like him can be made liable for.

One issue presented which is not frivolous and presents a substantial federal question is the authority of an attorney such as Mr. Horwatt to appear in the case and whether or not he owes a fiduciary duty to defendants particularly since the pleadings originally presented raised the issue of authorization by authorized parties to institute, prosecute and compromise or appeal this action or suit. The corporation whether consolidated or constituent such as Reston Homeowners Association owes defendant a fiduciary duty to disclose since the contract is one of agency. Any person acting for a corporate agent is a subagent who owes the same duty to disclose. Mr. Horwatt makes the bald allegation that the decision of the Virginia Courts

is based on adequate state grounds. Perhaps Mr. Horwatt if he is an agent within the scope of his authority can set forth what that ground is and where it is contained in the judgments or decisions of the Virginia tribunals.

Moreover, Mr. Horwatt makes the bald allegation that Reston Homeowners Association the appell ee in this case operates common areas and recreational facilities in Reston by virtue of certain covenants running with the land and all persons in Reston are automatically members of the association and are assessed an annual charge to support its operations alleging that appellants own such property and are accordingly members of appellee association.

Appellants contend that the covenants running with the land do not require them to be a member of any corporation other than Reston Second Homeowners Association which no longer exists. Nor do the alleged covenants set forth in the deed or the corporate charter require defendants to pay for any recreational facilities. The compulsory requirement by the State of Virginia and the fiduciaries such as the admissions of fiduciary

Horwatt (if he is in fact authorized to act under the terms of the contract at issue in this case) vitiate defendants 'Horwatt alleged' problems of proof. Moreover since appellee sued defendants, it is the position of defendant-appellants that the question is indeed a question of burden of proof but that appell ees have failed to prove that they are within the terms of the covenants in this assessment proceedings and thus should lose the case. Whoever would enforce covenants running with the land has the burden of proof that they are within the covenants, see Jernigan v. Capps, 187 Va 73, 78, and that the learned disposition of this case by the bench and bar of Virginia failed to correctly fix the burden of proof, i. e. on Reston Homeowners Association.

On the Seventh Amendment to the United States Constitution issue in the trial court, the Seventh Amendment does not permit of any construction that the appellant must appeal in order to protect Seventh Amendment rights particularly where the facts are as in this case, i. e, defendants were sued by an agent. Furthermore, this agent has repeatedly

refused to obey defendants instruction to obey the terms of the deed to defendants lot. This enforcement proceeding is unconstitutional under the Constitution of the United States, Article I, Section 10 which has been adversely decided against defendants and this extends to state action such as this corporate charter, see Williams v. Bruffy, 96 US 176, 183 (1877).

As to findings of fact by the tribunals of Virginia, perhaps 'fiduciary' Horwatt would be so good as to point out what those findings of fact were and where in the decisions of the Virginia tribunals those findings of fact exist. In Maguire v. Tyler, 8 Wall. 650, 19 L. Ed. 320, and Neilson v. Lagow, 12 How.98, 110, 13 L. Ed. 909 it was contended that the judgments rested on adequate state grounds but in neither was there an opinion of the state court. The Supreme Court of the United States found the state grounds not substantial or sufficient and reversed the judgment on the Federal question. All state action must be constitutional

Accordingly, appellants contend that the Virginia tribunals have necessarily rejected appellants federal rights

and the Supreme Court of the United States has jurisdiction to rule in this case; or in the alternative can vacate and remand to the Virginia Supreme Court for a more considered opinion, National Tea Co. v. Minn 309 US 551, 60 S. Ct. 676, 84 L. Ed. 920, and National Tea Co. v. State, 205 Minn 443,286 NW 360, and 208 Minn 607, 294 NW 30, and defendants request the Supreme Court to determine the case or to vacate and remand.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The deed to appellants lot is a vested interest entitled to protection under Article 1, Section 10 of the U. S Constitution, and it is right and equitable for the government to recognize and protect it, 2 Cooley Cons. Lim. (8th ed.) 745. Varying the terms of this deed by substituting agents at the request of the agent is unlawful and inequitable. This deed could not be directly changed by an agent without consent of appellants. In Lebold v. Inland Steel, 125 F.2d 369 (7th Cir. 1941), cert. den. 316 US 675, 86 L. Ed. 1045, 62 S. Ct. 1045 (1942) the Court said directors are fiduciaries citing Twin Lick Oil Co. v. Marbury, 91 US 587, 588, 23 L. Ed. 328 and so are dominant

stockholders (members), So. Pac. v. Bogert, 250 US 483,492, 39 S. Ct. 533,537, 63 L. Ed. 1099. One in a fiduciary position cannot serve themselves first and the cestui second since their powers are in trust, Jackson v. Ludeling, 21 Wall 616, 624, 22 L. Ed. 492. They cannot thru a corporate entity violate the precept against serving two masters nor can they violate the rules of fair play by doing indirectly through the corporation what they cannot do directly. Thus this enforcement proceeding is illegal, unconstitutional and inequitable.

SUPERVENING EVENTS UNDER RULE 58

It appears that the U. S. Supreme Court during the week of Oct. 16-23, 1978 granted an appeal or writ of certiorari to 11 Boston assessment payers on similar corporate charter issues as presented by this case. Coercion of individuals to require them to pay something not within the terms of the contract such as for capital improvements and recreation as appears admitted by fiduciary Horwatt in his motion is improper for an agent appellants contend. Appellants contend The U. S.Supreme Court has jurisdiction and is requested to exercise its discre-

tion and hear the case.

CERTIFICATE UNDER RULE 58

Defendants certify that this motion is made in good faith and is not made for delay.

CONCLUSION AND PRAYER FOR RELIEF

Defendants respectfully insist the Supreme Court of the United States has jurisdiction and that the appeal and/or writ of certiorari should be granted. The defendants thus petition the Court to set aside its order of October 2, 1978 denying jurisdiction and the writ of certiorari and to grant one or the other. In the alternative defendants petition the Court to vacate the judgment of the Virginia Supreme Court and remand for a more considered opinion.

CERTIFICATE OF SERVICE

I certify that three copies of the foregoing motion were sent by first class mail postage prepaid on October 26, 1978 to each of the following: Reston Homeowners Association, c/o Micael S. Horwatt 11,800 Sunrise Valley Drive, Reston, Va. 22091, and to the Clerk of the Virginia Supreme Court and to Honorable Marshall Coleman, Attorney General of Virginia each of which are in the Supreme Court

Building Richmond, Virginia.

James Lee Ridgill, Jr.
2516 Appaloosa Court
Reston, Virginia

APPENDIX 1

IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

April 21, 1978

Reston Homeowners Association, Inc.)
Appellees) Case
v) No. _____
James L. and Janie E. Ridgill)
Appellants)

PETITION FOR EXTENSION OF TIME UP TO AND INCLUDING APRIL 22, 1978 FOR DOCKETING THE JURISDICTIONAL STATEMENT HEREIN IN SUPPORT OF NOTICE OF APPEAL TO THE SUPREME COURT OF VIRGINIA IN ITS CASE NO. 77-0371

To the Chief Justice and Justices of the Supreme Court of the United States:

Come now your petitioners James L. and Janie E. Ridgill in the above styled cause and file this their petition for leave to docket this case and in support of this petition set forth as follows:

The Attorney of Record for petitioners in the Virginia Courts is not a member of the Bar of the Supreme Court of the United States to your petitioners' knowledge. Thus the burden of going forward with this case fell upon your petitioner James Ridgill. Additional counsel was not feasible.

During the period of January-April, 1978 your petitioner James Ridgill had a heavy

case load as a primary examiner in the United States Patent Office and the time he could spend on this Jurisdictional Statement was mostly confined to weekends. During the months of January, February and the first portion of March of 1978 the inclement weather restricted your petitioners efforts to research the case in the Law Library of the Library of Congress since he was in some instances prevented from going there due to the weather. And these foregoing matters taken with the burden of drafting, printing and paying for the jurisdictional statement and its filling has militated against an earlier filing. And your petitioners contend they have been diligent.

Wherefore your petitioners believe that the ends of justice will be served by the docketing of this case at this time and pray that an extension of time for docketing the Jurisdictional Statement in Support of Notice of Appeal to the Virginia Supreme Court in its Case No. 77-0371 be extended up to and including April 22, 1978.

In further support of this prayer for leave to docket this case your petitoners believe that they timely filed a Notice of Appeal under Rule 10 of this Court by sending the said Notice first class mail postage prepaid to the Supreme Court of Virginia and to Reston Homeowners Association under date of February 20, 1978, see Enclosure 1 for a copy of said Notice. And this Notice of Appeal was sent to perfect an appeal or a writ of certiorari to obtain a review of the final judgment of the Virginia Supreme Court in its Case No. 77-0371 entered September 29, 1977 per Enclosure 2, and from the denial of a petition for rehearing entered November 23, 1977 by the Virginia Supreme Court, a copy of which is appended in Enclosure 3.

Your petitioners further evince their belief that an extension of time for docketing this case up to and including April 22, 1978 would not establish a new precedent because the Supreme Court of the United States in Johnson v. Florida, 391 US 596, 598 n permitted an extension of 56 days and stated that the question was not jurisdictional. Accordingly, your petitioners pray that this leave to docket be granted.

Respectfully submitted,

Janie E. Ridgill

James Lee Ridgill, Jr.

Enclosure 1 -- Notice of Appeal
Enclosure 2 -- Judgement of Virginia Supreme Court in its Case No. 77-0371 entered September 29, 1977
Enclosure 3 -- Order of Virginia Supreme Court entered November 23, 1977 denying a petition for rehearing in its Case No. 77-0371

CERTIFICATE

I certify that I am a member of the Bar of the Supreme Court of the United States and that on April 21, 1978, by first class mail postage prepaid I sent a copy of the foregoing petition for leave to docket the Jurisdictional Statement in Support of Notice of Appeal to the Supreme Court of Virginia in its Case No. 77-0371 along with a copy of Enclosures 1-3 to the said statement to each of the Honorable Marshall Coleman, Attorney General of Virginia, whose

address is the Supreme Court Building, Richmond, Virginia, and to Reston Homeowners Association, c/o Thomas S. Kenny, 11800 Sunrise Valley Drive, Reston, Virginia 22091. All parties required to be served have been served and a copy likewise to Clerk, Virginia Supreme Court.

James Lee Ridgill, Jr.
2516 Appaloosa Court
Reston, Virginia 22091

APPENDIX 2

8.01-672 CODE OF VIRGINIA

Jurisdictional amount. No petition shall be presented for an appeal from any judgement of a circuit court except in cases in which the controversy is for a matter of five hundred dollars or more in value or amount, and except in cases in which it is otherwise expressly provided; nor to a judgement of any circuit court when the controversy is for a matter less in value or amount than five hundred dollars, exclusive of costs, unless there be drawn in question a freehold or franchise or the title or bounds of land, or some other matter not merely pecuniary. (Code 1950, 8-464; 1977, c. 617).

APPENDIX 3

A F F I D A V I T

COMES NOW your deponent, THOMAS S. KENNY, having been duly sworn, and makes oath as follows:

1. He is attorney and agent for RESTON HOME OWNERS ASSOCIATION, a Virginia non-stock corporation, and as such is familiar with the books of account of such organization.

2. The defendants, JANIE and JAMES L. RIDGILL, are to the best of deponent's belief and knowledge, the owners of record of the following described premises located in Reston, Fairfax County, Virginia:

Section 4, Lot 204
Reston, Fairfax County,
Virginia
A/K/A 2516 Appaloosa Court

3. Such premises, described above, are subject to an annual assessment in favor of the Reston Home Owners Association as more fully set forth in certain protective covenants and restrictions contained in the original Deed of Dedication recorded in Deed Book 2761, Page 415, of the land records of Fairfax County, Virginia, and incorporated by reference in one or more deeds in defendants' chain of title, by which defendants have obligated themselves to pay the same when due.

4. Such annual assessment for the year 1974 was duly fixed at Sixty Dollars ($60.00) plus a late charge of $2.00 by the Board of Directors of the Reston Home Owners Association, and was due and owing on or before

March 31, 1974; but despite repeated requests by plaintiff, no part hereof has been paid by defendants.

5. The full amount of such assessment plus late charge is presently due and owing, and is not subject to offset or counter claim.

6. And this the deponent does verify.

_____
Thomas S. Kenny
Attorney and Agent

STATE OF VIRGINIA,

COUNTY OF FAIRFAX, to wit:

Subscribed and sworn to before me this ____ day of _____, 1975.

My Commission Expires:

_____ _____
Notary Public

APPENDIX 4

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

RESTON HOMEOWNERS ASSOCIATION, INC.)
Plaintiff)
vs)
JANIE E. RIDGILL and)
JAMES L. RIDGILL,)
Defendants)

PRE-TRIAL ORDER

THIS CAUSE came on this 12th day of August, 1976, for pre-trial hearing on the pleadings, and on various pleas and motions of both parties relating to plaintiff's original affidavit and defendants' answer and counterclaim under oath and was argued by counsel. Upon consideration whereof, it appearing to the Court that the following actions should be taken, it is ADJUDGED, ORDERED AND DECREED as follows:

1. Trial of this cause on the merits is set for October 19, 1976, at 10:00 AM or as soon thereafter as the case may be heard, and shall be limited to the following contentions and defenses:

a. Plaintiff contends that there is presently due and owing to it by defendants the sum of $60 consisting of a $60 annual assessment of homeowners dues for 1974;

Plaintiff bases it's contention on certain recorded covenants which it claims run with the land and bind the land of

defendants, and which it further claims it has authority to enforce;

b. Defendants contend that they are not subject to any covenants which are unreasonable or which are not within the strictly construed covenants of record within the chain of title of Lot 204, Section 4, Reston, as recorded in Deed Book 3201, page 626 of the land records of Fairfax County, Virginia, and defendants further contend that they are not members of Reston Homeowners Association because:

(1) plaintiff or its successors are not parties to said covenants;

(2) plaintiff or its successors is not agent defendants within the terms of said covenants;

(3) affirmative covenants such as the payment of a $60 assessment in this action are not enforceable in Virginia;

(4) the records of Reston Homeowners Association such as its charter, by-laws, minutes of its meetings -- whether Directors or Members meetings -- are not recorded in the chain of title of Lot 204, Section 4, recorded as aforesaid;

(5) enforcement of this $60 assessment is an unconstitutional variation of the deed to Lot 204, Section 4, Reston, as recorded as aforesaid, under Article 1, Section 10 of the Constitution of the United States;

(6) the jurisdictional and removal statutes under which the Fairfax County

General District Court operates are unconstitutional under the Seventh Amendment of the Constitution of the United States;

(7) Reston Homeowners Association is no more than a third party beneficiary and cannot enforce any contract on defendant other than those set forth by defendants in said chain of title of Lot 204, Section 4, Reston;

(8) reasonable standards are not set forth in said covenants for ascertaining how said assessments are to be determined, apportioned, or spent, and are therefore void as being unconstitutional and indefinite.

c. Cut-off date for discovery is set as October 1, 1976.

d. Plaintiff expects to call three or four witnesses and defendants expect to call a like number;

2. And this cause is continued to October 19, 1976.

Enter: _____

_____
Judge